

## TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to repeal the rule cited as 10A NCAC 28I .0401 and the Department of Health and Human Services-DMH/DD/SAS intends to adopt the rule cited as 10A NCAC 28I .0402.*

**Proposed Effective Date:** April 1, 2007

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rule by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by October 17, 2006.*

**Reason for Proposed Action:** *It is proposed that 10A NCAC 28I .0401 be repealed and that 10A NCAC 28I .0402 be adopted to replace it. The proposed repeal and adoption is necessary to update the requirements concerning firearms and state facilities. The current rule was adopted in 1976 under the rulemaking authority of the Commission for MH/DD/SAS. S.L. 1985-589 repealed previous mental health statutes codified in G.S. 122 and created a new Chapter, G.S. 122C. G.S. 122C-112.1(a)(10) states the Secretary shall operate state facilities and adopt rules pertaining to their operation. Therefore, it is necessary that the Commission for MH/DD/SAS repeal the current rule and that the Secretary adopt a new rule concerning firearms and state facilities. The proposed adoption is necessary to update the requirements concerning firearms and state facilities. The proposed rule requires each state operated facility to develop and implement written policies concerning firearms. It allows law enforcement officers to carry firearms into non-patient and resident care areas of the facility, such as the officer of law enforcement department or other buildings on campus as part of safety patrol.*

**Procedure by which a person can object to the agency on a proposed rule:** *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

**Comments may be submitted to:** *Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email Cindy.Kornegay@ncmail.net*

**Comment period ends:** December 1, 2006

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.*

### Fiscal Impact:

- ☐ State  
☐ Local  
☐ Substantive ( $\geq \$3,000,000$ )  
☒ None

## CHAPTER 28 – MENTAL HEALTH: STATE OPERATED FACILITIES AND SERVICES

### SUBCHAPTER 28I – OTHER RULES PERTAINING TO STATE OPERATED FACILITIES AND SERVICES

#### SECTION .0400 - MISCELLANEOUS

##### 10A NCAC 28I .0401 FIREARMS

~~No firearms shall be brought into the buildings of any institution of the Division. Law officers shall either leave firearms in their locked motor vehicle or deposit their firearms with responsible staff personnel of the institution.~~

*Authority G.S. 143B-147.*

##### 10A NCAC 28I .0402 FIREARMS

(a) Each state facility shall develop and implement written policies concerning firearms.

(b) The written policies shall include:

- (1) a provision stating that only a law enforcement official may bring a firearm onto the grounds of the facility;

- (2) a provision setting forth the areas of the facility where firearms are prohibited. At a minimum, each facility's policy shall prohibit firearms from any patient or resident care area unless a law enforcement official determines it is necessary to ensure client or staff safety; and
- (3) a provision stating that prior to entering an area of the facility where firearms are prohibited, a law enforcement official shall:
  - (A) secure his or her firearm in his or her locked motor vehicle or;
  - (B) deposit his or her firearm in a secured site as designated by the facility.

*Authority G.S. 122C-112.1.*